

MAR 3 1977

APPENDIX

MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1976

No. 76-446RAYMOND K. PROCUNIER, et al.,
Petitioners,

VS.

APOLINAR NAVARETTE, JR.,
*Respondent.***On Writ of Certiorari to the United States Court of Appeals
for the Ninth Circuit****Petition for Certiorari Filed September 28, 1976****Certiorari Granted January 17, 1977**

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¹The opinion of the Court of Appeals filed February 9, 1976, may be found in Appendix A to the petition for certiorari.

**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

October 30, 1972—Plaintiff Navarette's *pro se* Complaint for Damages filed in the United States District Court for the Northern District of California.

December 21, 1972—Defendants' Motion to Dismiss filed.

February 2, 1973—Plaintiff's Points and Authorities in Opposition to Motion to Dismiss filed.

February 9, 1973—Order filed dismissing complaint without prejudice.

April 27, 1973—With aid of counsel, Plaintiff's Amended Complaint filed.

May 25, 1973—Defendants' Motion to Dismiss or for Summary Judgment filed.

January 19, 1974—With aid of Counsel, Plaintiff's Second Amended Complaint filed.²

February 21, 1974—Defendants' Motion to Dismiss or for Summary Judgment filed.

April 17, 1974—Plaintiff's Points and Authorities Against Motion to Dismiss filed.

May 3, 1974—Order granting Summary Judgment as to claims 1, 2, 3, and dismissing claims 4, 5, 6, 7, 8 and 9 filed.

June 4, 1974—Notice of Appeal filed by plaintiff.

June 10, 1974—Judgment entered.

²The First Amended Complaint was withdrawn on July 27, 1973 (CT 72-74). The docket does not reflect this action.

June 26, 1974—Cause docketed in United States Court of Appeals for the Ninth Circuit.

August 15, 1974—Appellant Navarette's opening brief filed.

September 13, 1974—Appellees' brief filed.

October 8, 1974—Appellant's reply brief filed.

February 13, 1975—Cause submitted on briefs.

February 9, 1976—Opinions of the Court of Appeals filed.

March 3, 1976—Appellees' Petition for Rehearing and Suggestion for Rehearing en banc filed.

March 30, 1976—Appellees' letter dated March 29, 1976, re *Paul v. Davis* received.

July 29, 1976—Order denying rehearing and rejecting suggestion for rehearing en banc filed.

August 5, 1976—Order Staying Mandate filed.

August 9, 1976—Appellees' letter dated August 5, 1976, re *Montayne v. Haymes*, received.

September 28, 1976—Petition for Writ of Certiorari filed.

January 17, 1977—Order granting Petition for Writ of Certiorari filed.

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Attorney for Plaintiff.

The United States District Court
Northern District of California

—
No. C-72-1954 SW
—

Apolinar Navarette, Jr.,
aka Paul Medel Navarette,
Plaintiff,

vs.

Raymond K. Procunier, T. W. Stone,
P. J. Morris, B. Neal, R. Kramer,
W. L. Johnson and Does I through
IV,
Defendants.

SECOND AMENDED COMPLAINT FOR
DEPRIVATION OF CIVIL RIGHTS

Comes now Plaintiff Apolinar Navarette, Jr., aka Paul Medel Navarette, and alleges as follows for Causes of Action against Defendants and each of them;

First Cause of Action

I

Plaintiff is a citizen of the State of California, and a resident of this judicial district.

II

Defendants Procunier, Stone, Morris, Neal, Kramer, Johnson, and Does I, II, III and IV are all citizens of the State of California.

III

The matter in controversy exceeds Fifty Thousand Dollars (\$50,000.00) exclusive of interest and costs.

IV

This action arises under Title 42 of the United States Code, Sections 1983 and 1985, and this court has jurisdiction of the action under Title 28 of the United States Code, Sections 1331 and 1343.

V

At all times pertinent to this Complaint, Defendant Procunier was Director of the California State Department of Corrections (hereinafter "Department of Corrections") and was responsible for promulgating and maintaining statewide departmental regulations regarding the rights and privileges of prisoners at penal facilities under the authority of the department; Defendant Stone was employed by the Department of Corrections as Superintendent of the Soledad Correctional Training Facility (hereinafter "Soledad"),

and was responsible for implementation of all applicable laws and regulations at Soledad; Defendant Morris was employed by the Department of Corrections as Associate Superintendent of Soledad, and was responsible for assisting in implementation of all applicable laws and regulations at Soledad; Defendants Neal and Kramer were employed by the Department of Corrections as correctional counselors at Soledad, and were responsible for supervising certain prisoners, including Plaintiff; Defendant Johnson was employed by the Department of Corrections as a member of the prison staff at Soledad, and was in charge of handling incoming and outgoing prisoner mail.

VI

Plaintiff was incarcerated at Soledad from approximately September 1, 1971 to approximately December 11, 1972, at which time Plaintiff was put on parole. Plaintiff will not be discharged from parole until approximately October 24, 1975.

VII

Defendants Neal, Kramer, Johnson and Does I through IV, acting both individually and jointly together, failed to mail a considerable amount of correspondence which Plaintiff properly submitted to them for mailing during the period of this incarceration at Soledad. The various pieces of such correspondence dealt with legal, political and personal matters. None of such correspondence threatened, contemplated, or included plans for any criminal activity whatsoever; none threatened or posed any

clear and present danger of physical harm or violence to any person; none was obscene; none was written in any form of code. Said unmailed correspondence includes but is not limited to the following:

(1) A packet mailed by Plaintiff on or about December 9, 1971, to the Prison Law Project in Oakland, California, containing the only copy then in Plaintiff's possession of his draft of a Writ of Habeas Corpus which Plaintiff intended to file shortly thereafter. The Prison Law Project never received this packet.

(2) A letter which Plaintiff posed between mid-December, 1971 and mid-January, 1972, to Mariano Gonzales, an inmate incarcerated at Sierra Conservation Center in California (hereinafter "Sierra"). The letter requested that Gonzales immediately return to Plaintiff the copy of Plaintiff's abovementioned Writ of Habeas Corpus which Gonzales had in his possession. Gonzales never received the letter.

(3) Two letters which Plaintiff posted on January 16 and 18, 1972, respectively, to Henry Navarro, an inmate incarcerated at Sierra. The letters requested a copy of a different Writ of Habeas Corpus which Navarro had in his possession to assist Plaintiff in redrafting his own Writ, but also requested a copy of a motion to waive appeal bond which Navarro had in his possession so that Plaintiff could assist a fellow inmate at Soledad in preparing an appeal. Navarro never received the letter.

(4) Two letters which Plaintiff posted, respectively, during January, 1972, and February, 1972,

to Robert Manriquez. The letters asked Manriquez to send Plaintiff the citations to certain judicial decisions, and some money needed by Plaintiff to pursue his legal actions. Manriquez received neither letter.

(5) A letter which Plaintiff posted on or about January 2, 1972, to Rita Serna, secretary to Ceasar Chavez, requesting help and support for Plaintiff's Writ of Habeas Corpus. Serna never received the letter.

(6) A letter to La Casa Legal de San Jose Project, during or about February, 1972, enclosing Plaintiff's drafts of a civil complaint dealing with the matters herein involved, and seeking legal representation from this agency;

(7) Three letters which Plaintiff posted, respectively, on or about February 20, 1972, February 21, 1973, and April 30, 1972, to Teresa Gonzales, the wife of Mariano Gonzales, who was an inmate at Sierra. Said letters were written to further Plaintiff's efforts to assist Mariano Gonzales in pursuing legal remedies. The letters were not received.

(8) Letter posted by Plaintiff, during late September, 1972, or thereabouts, to Steve Sonora, a law student, requesting follow-up assistance in regard to Plaintiff's Writ of Habeas Corpus filed in March, 1972. Sonora never received the letters.

(9) Eight packets, each containing a copy of a letter from Plaintiff to Roger Cortez dated May 6, 1972 and a copy of a letter from Plaintiff to a court clerk dated June 8, 1972, which Plaintiff posted on

or about May 8, 1972 to the following eight addresses: Roger Cortez, a Chicano student group, five Chicano newspapers, and a television station. The letter to Cortez referred, inter alia, to their political struggle against the injustice and prejudice meted out to Mexican-Americans. The letter to the court clerk expressed Plaintiff's frustration at the allegedly systematic unresponsiveness of the clerk's office to Plaintiff's requests and inquiries arising from preparation of his Writ of Habeas Corpus. Based upon a decision by Defendant Kramer and some or all of the other Defendants, all eight packets were returned unmailed to Plaintiff.

(10) Two letters posted by Plaintiff on May 14, 1972, and July 6, 1972, respectively, to Miss Jesse Serna, each containing personal messages and enclosing application forms for Miss Serna to apply for status as an approved correspondent with Plaintiff. Miss Serna received neither letter.

(11) A letter to Tom Burke, a Stanford law student, on or about September, 1971, in which Plaintiff requested legal help in regard to my own Writs of Habeas Corpus as well as a Writ which Plaintiff was preparing on behalf of another inmate;

(12) A letter to David Squazell, a Stanford law student on or about November, 1971, in which Plaintiff requested legal help in connection with the same Writs;

(13) A letter to Victor Reyes, chairman of a Law Project at the University of Santa Clara, on or about

March, 1972, enclosing drafts of the same civil complaint, and seeking legal assistance in regard thereto.

VIII

Defendants, Neal, Kramer, Johnson and Does I through IV, and each of them, acting both individually and in concert, refused to send as registered mail numerous items of correspondence of legal character which Plaintiff duly presented to said Defendants for posting. As a proximate result of such refusals, none of said letters were ever received by addressees. The foregoing letters include but are not limited to items (1), (6), (11), (12), and (13) specified in Paragraph VII hereinabove.

IX

Correspondence described in Paragraphs VII and VIII hereinabove failed to reach the addressees to whom destined as a proximate result of interference or confiscation by Defendants Neal, Kramer, Johnson and Does I through IV, and each of them, acting both individually and in a concert of action wherein each said Defendant acquiesced, condoned, encouraged, and assisted the actions of each other in a deliberate effort to single out Plaintiff for harsh, arbitrary, and discriminatory treatment with regard to his correspondence, in knowing disregard of applicable statewide prisoner mail regulations then in effect as set forth in the Director's Mail and Visiting Manual for the Department of Corrections, including rules 1201, 1205 (D) and (F), 12401 and 12402(8)

therein (hereinafter "Statewide Manual"). Said correspondence was in fact permitted by the aforesaid mail regulations.

X

Defendants Procunier, Stone, and Morris encouraged, directed, ratified and knowingly acquiesced in the actions of Defendants Neal, Kramer, Johnson and Does I through IV as described in Paragraphs VII through IX hereinabove, and did so both individually and in pursuance of a common plan or design, deliberately singling out Plaintiff for harsh, arbitrary, and discriminatory treatment with regard to his correspondence, in knowing disregard of the fact that Plaintiff's constitutional rights were thereby violated.

XI

The above described actions by Defendants, and each of them, deprived Plaintiff of his civil rights, including his rights to free speech and due process, as guaranteed by the First, Fifth, and Fourteenth Amendments to the United States Constitution, and by Title 42 of the United States Code, Sections 1983 and 1985. Said actions have caused actual damage to Plaintiff in the amount of Ten Thousand Dollars (\$10,000.00), and, due to their aggravated, callous, and malicious character, as well as to the critically important character of the rights herein infringed upon further entitle Plaintiff to punitive damages in the amount of Ninety Thousand Dollars (\$90,000.00).

Second Cause of Action

I

Plaintiff herein realleges and incorporates by reference Paragraphs I through VIII of the First Cause of Action in this Complaint, and each and every allegation contained in such Paragraphs, as though fully set forth herein.

II

Such correspondence failed to reach the persons to whom destined as the proximate result of interference or confiscation of said Correspondence by Defendants Neal, Kramer, Johnson, and Does I through IV, and each of them, acting both individually and in concert, in bad faith disregard of the prisoner mail regulations then in effect as embodied in the Statewide Manual, and in each such act of confiscation of or interference with Plaintiff's correspondence, said Defendants lacked probable cause to belief that such correspondence was in violation of said prisoner mail regulations. Said correspondence was in fact permitted by said mail regulations.

III

Defendants Procunier, Stone, and Morris encouraged, directed, ratified, participated, and knowingly acquiesced in the actions of Defendants Neal, Kramer, Johnson, and Does I through IV as described in Paragraph II hereinabove, and did so in bad faith disregard of Plaintiff's constitutional rights, and without probable cause to believe that such correspondence exceeded the bounds of constitutional protection en-

joyed by Defendant. As a proximate result thereof, said correspondence failed to reach the persons to whom destined.

IV

Plaintiff herein realleges and incorporates by reference Paragraph XI of the First Cause of Actions of this Complaint, and each and every allegation contained therein, as though fully set forth herein.

Third Cause of Action

I

Plaintiff herein realleges and incorporates by reference Paragraphs I through VIII of the First Cause of Action in this Complaint, and each and every allegation contained in said Paragraphs, as though fully set forth herein.

II

Such correspondence failed to reach the persons to whom destined as the proximate result of interference with or confiscation of such correspondence by Defendants Neal, Kramer, Johnson, and Does I through IV, and each of them, acting both individually and in concert. In so acting, Defendants negligently and inadvertently misapplied the prisoner mail regulations then in effect as embodied in the Statewide Manual. Such correspondence was in fact permitted by the aforesaid mail regulations.

III

Such correspondence failed to reach the persons to whom destined as the proximate result of the negli-

gent failure of Defendants Procunier, Stone, and Morris to furnish Defendants Neal, Kramer, Johnson, and Does I through IV with sufficient training and direction on how to evaluate prisoner correspondence, including that of Plaintiff, to avert the unreasonable risk of interference with or confiscation of correspondence which in fact is constitutionally protected.

IV

Plaintiff herein realleges and incorporates by reference Paragraph XI of the First Cause of Action of this Complaint, and each and every allegation contained herein as though fully set forth.

Fourth Cause of Action

I

Plaintiff herein realleges and incorporates by reference Paragraphs I through VI, inclusive of the First Cause of Action of this Complaint, and each and every allegation contained in such Paragraphs as though fully set forth herein.

II

For approximately three months during fall of 1971, plaintiff held the position of prison law librarian at Soledad, during which time his heightened access to library facilities enabled plaintiff, in addition to fully performing his duties as librarian, to pursue his own legal self-education, and as a consequence, to prepare semi-adequate writs and pleadings in approximately twelve different cases, on behalf of himself and others.

III

Starting on or about February, 1972, a small number of Stanford law students, all of whom were accredited for supervised practice, were permitted by the Department of Corrections to visit inmates at Soledad for the purpose of discussing the legal needs and problems of such inmates. Said law students at all times conducted themselves reasonably in connection with such interviews and in no respect abused the privileges under said program. The legal advice and assistance which Plaintiff received as a result of such law students interviews had begun significantly to educate plaintiff, and, as a consequence thereof, to facilitate greatly the large number of legal actions, including the within action, which Plaintiff had been seeking to bring in order to obtain judicial relief both for himself and others.

IV

Late in 1971, defendants Stone and Morris, both individually and in concert together, abruptly changed plaintiff's job position, and as a proximate result thereof, plaintiff's access to legal books and materials in said library was substantially curtailed. Moreover, in fall, 1972, said defendants, both individually and in concert together, also terminated the visitation program described in the immediately preceeding paragraph, and, as a proximate result thereof, thereby thwarted plaintiff's efforts to acquire an adequate fund of legal knowledge in respect to the legal remedies available to himself and others. In direct conse-

quence of both actions by said defendants as described in the within paragraph, plaintiff was prevented from pursuing in adequate and timely manner, available legal remedies on behalf of himself and others.

V

Defendants Stone and Morris deliberately perpetrated the actions hereinabove described for the purpose of thwarting and impeding plaintiff's acquisition of knowledge of available legal remedies, and did so in knowing disregard of plaintiff's constitutional rights.

VI

Defendant Procunier encouraged, directed, ratified, and knowingly acquiesced in the actions of defendants Stone and Morris and did so in pursuance of a common plan or design to single out plaintiff for harsh and arbitrary treatment with regard to his legal activities, and with knowing disregard of plaintiff's constitutional rights.

VII

The above described actions by Defendants, and each of them, deprived Plaintiff of his civil rights, including his rights to free speech and due process, as guaranteed by the First, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and by Title 42 of the United States Code, Sections 1983 and 1985. Said actions have caused damage to Plaintiff in the amount of Ten Thousand Dollars (\$10,000.00), and, due to their aggravated, callous, and malicious character, as well as to the critically

important character of the rights herein infringed upon, further entitle Plaintiff to punitive damages in the amount of Ninety Thousand Dollars (\$90,000.00).

Fifth Cause of Action

I

Plaintiff herein realleges and incorporates by reference Paragraphs I through IV of the Fourth Cause of Action of this Complaint, and each and every allegation contained in such Paragraphs as though fully set forth herein.

II

Defendants Stone and Morris perpetrated the above described actions in bad faith disregard of plaintiff's constitutional rights. In each such action, said defendants lacked probable cause to believe that plaintiff's legal activities thereby interfered with were unprotected from such interference by the Constitution and Laws of the United States.

III

Defendant Procunier, encouraged, directed, ratified, participated, and knowingly acquiesced in the actions of defendants Stone and Morris as described herein above, and did so in bad faith disregard of plaintiff's constitutional rights, and without probable cause to believe that plaintiff's legal activities which were thereby impeded and thwarted were unprotected by the constitution and Laws of the United States.

IV

Plaintiff herein realleges and incorporates by reference Paragraph VII of the Fourth Cause of Action of this Complaint, and each and every allegation contained in such Paragraph though fully set forth herein.

Sixth Cause of Action

I

Plaintiff herein realleges and incorporates by reference Paragraphs I through IX of the Fourth Cause of Action of this Complaint, and each and every allegation contained in such Paragraphs as though fully set forth herein.

II

Defendants Stone and Morris, both individually and in concert together, perpetrated the aforementioned actions in negligent disregard of the risk thereby posed of unreasonable interference with legal activities of plaintiff which enjoy the protection of the Constitution and Laws of the United States.

III

Defendant Procunier permitted the aforementioned actions of Defendants Stone and Morris to transpire due to the negligent failure of Defendant Procunier to provide defendants Stone and Morris with sufficient training and direction on how to regulate the legal activities of prisoners consistently with the Constitution and Laws of the United States. Through said negligent failure, Defendant Procunier courted the

risk of unreasonable interference with and impeding of Plaintiff's protected legal activities.

IV

Plaintiff herein realleges and incorporates by reference Paragraph VII of the Fourth Cause of Action of this Complaint, and each and every allegation contained in such Paragraph as though fully set forth herein.

Seventh Cause of Action

I

Plaintiff herein realleges and incorporates by reference Paragraphs I through IX of the First Cause of Action of this Complaint, and each and every allegation contained in such Paragraphs as though fully set forth herein.

II

At all pertinent times, Defendants Neal, Kramer, Johnson and Does I through IV were the agents and employees of Defendants Procunier, Stone and Morris, and, in perpetrating the actions described hereinabove, acted within the scope of said agency and employment.

III

Plaintiff herein realleges and incorporates by reference Paragraphs I through V of the Fourth Cause of Action of this Complaint, and each and every allegation contained therein as though fully set forth herein.

IV

At all pertinent times, Defendants Stone and Morris were the agents and employees of Defendant Procunier, and, in perpetrating the actions described hereinabove, did act within the scope of said agency and employment.

V

Plaintiff herein realleges and incorporates by reference Paragraph XI of the First Cause of Action and Paragraph VII of the Fourth Cause of Action of this Complaint, and each and every allegation contained therein as though fully set forth herein.

Eighth Cause of Action

I

Plaintiff herein realleges and incorporates by reference Paragraphs I through VIII of the First Cause of Action and Paragraph II of the Second Cause of Action of this Complaint, and each and every allegation contained therein as though fully set forth herein.

II

At all pertinent times, Defendants Neal, Kramer, Johnson and Does I through IV were the agents and employees of Defendants Procunier, Stone and Morris, and in perpetrating the actions, described hereinabove, acted within the scope of said agency and employment.

III

Plaintiff herein realleges and incorporates by reference Paragraphs I through IV of the Fourth Cause of Action and Paragraph II of the Fifth Cause of Action of this Complaint, and each and every allegation contained therein as though fully set forth herein.

IV

At all pertinent times, Defendants Stone and Morris were the agents and employees of Defendant Procunier, and, in perpetrating the actions described hereinabove, did act within the scope of said agency and employment.

V

Plaintiff herein realleges and incorporates by reference Paragraph XI of the First Cause of Action and Paragraph VII of the Fourth Cause of Action of this Complaint, and each and every allegation contained therein as though fully set forth herein.

Ninth Cause of Action

I

Plaintiff herein realleges and incorporates by reference Paragraphs I through VIII, of the First Cause of Action and Paragraph II of the Third Cause of Action of this Complaint, and each and every allegation contained therein as though fully set forth herein.

II

At all pertinent times, Defendants Neal, Kramer, Johnson and Does I through IV were the agents and

employees of Defendants Procunier, Stone and Morris, and, in perpetrating the actions described hereinabove, acted within the scope of said agency and employment.

III

Plaintiff herein realleges and incorporates by reference Paragraphs I through IV, of the Fourth Cause of Action and Paragraph II of the Sixth Cause of Action of this Complaint, and each and every allegation contained therein as though fully set forth herein.

IV

At all pertinent times, Defendants Stone and Morris were the agents and employers of Defendant Procunier, in perpetrating the actions described hereinabove, did act within the scope of said agency and employment.

V

Plaintiff herein realleges and incorporates by reference Paragraph XI of the First Cause of Action and Paragraph VII of the Fourth Cause of Action of this Complaint, and each and every allegation contained therein as though fully set forth herein.

Wherefore, Plaintiff claims damages of the defendants, and each of them, in the amount of one hundred thousand dollars (\$100,000.00).

Dated, _____, 1974.

Michael E. Adams

/s/ Michael E. Adams
Attorney for Plaintiff